

DEPARTMENT OF INTERIOR AND THE INDIAN TRUST

*by Heather Smedberg,
The Newberry Library,
Chicago, Illinois*



n Wednesday, December 5, 2001, the web sites of the United States Department of Interior, including all related bureaus, agencies, and organizations, were removed from the World Wide

Web, without notice or any information on when would-be-users could expect restored service. The shutdown was a result of that day's ruling by U.S. District Court Judge Royce C. Lamberth in connection with a long-running civil lawsuit between members of various American Indian tribes and the Department of the Interior. The lawsuit deals with the mismanagement of Indian Trust Monies for over a hundred years by the Department of the Interior, but was brought to the attention of the wider public audience when it caused this widespread interruption of Internet service.

As a part of the investigation into the lawsuit, a team of hackers successfully established a new trust account and cut a check to demonstrate the ineptitude of the department's online security system. Judge Lambert saw the danger of this weakness in online security a serious enough risk to the financial accounts of thousands of American Indians and warranted a complete shutdown of the Department of Interior's Internet connections until improved security measures approved by the court could be demonstrated.¹ This shutdown brought about confusion and complaints by government documents librarians and other users seeking access to the wealth of information maintained on many Department of Interior web sites. While the majority of the web sites are back in service, many were down for months, and some agencies, including the Bureau of Indian Affairs (B.I.A.) are still offline or allow only limited access.

The case behind the massive blockage of Internet transmission of government information is an ongoing civil action case headed by Eloise Pepion Cobell against the Department of the Interior. According to the Native American Rights Fund's (N.A.R.F.), the story of this case begins in 1887 with the General Allotment Act (commonly known as the Dawes Act). This legislation sought to "civilize" the American Indians, meanwhile opening access to their lands, by breaking up their collective

land holdings into smaller parcels. Under the act, the profits from mining, timber sales, and grazing on these lands were to be managed by the Department of the Interior's Bureau of Indian Affairs, who saw the American Indians as incapable of properly managing the funds. The money held in trust under this system is the subject of the current case.²

Awareness of the problems with the Interior's handling of Indian Trust monies broke onto the governmental and public sphere with the 1992 report by the House Committee on Government Operations entitled, 'Misplaced Trust: The Bureau of Indian Affairs mismanagement of the Indian Trust Fund.' Then in 1994, Congress passed the Indian Trust Fund Management Reform Act (103 P.L. 412, 25 U.S.C. 4001) and appointed veteran bank reformer Paul Homan as trustee. Frustrated with the Interior Department's Secretary Bruce Babbitt's refusal to support the changes necessary to accomplish the daunting task of cleaning up the accounting mess, Homan resigned, and progress on the Act stalled.³

Continual failure of the Department of the Interior to adhere to the 1994 Act, and a seeming overall departmental indifference to reform finally stirred the N.A.R.F. and Eloise Pepion Cobell, treasurer for the Blackfoot Nation, to file a civil lawsuit on behalf of approximately 500,000 Indian Trust beneficiaries against then Secretary of the Interior Bruce Babbitt, Secretary of the Treasury Lawrence Summers, and Assistant Secretary of the Interior Kevin Gover. The intent of the lawsuit was to force the Interior and Treasury Departments to fix the system, complete an accurate historical accounting, and correct the accounts of beneficiaries accordingly. On November 17, 1996, both parties signed an order to this effect, an order which N.A.R.F. and the plaintiffs assert the government has not followed.⁴

Although they signed the order, the governmental agencies demonstrated from early on in the case their inability to produce the necessary documents to fulfill the historical accounting stage of the lawsuit. Because the correction of the inherent problems and of individual beneficiaries' accounts depends upon successful

completion of this historical accounting, the case has become mired in the courts, with the governmental agencies attempting to reorganize and establish a new accounting system without producing the historical accounts, and the plaintiffs charging the agencies and their secretaries with contempt of court for failing to produce the ordered documents.

Part of the problem is the long-running disorganization of the Indian Trust system. For over a hundred years the accounts have been mismanaged, but the mistakes of past generations should not be seen as the fault of current administrators, the government argues. The current Secretary of the Interior Gale Norton has thus worked to create a new system of management of the funds and on November 20, 2001, established the Office of Indian Trust Transition.⁵ The plaintiffs and some members of Congress do not see this action as pursuant to the court's order to produce historical accounting. Rather, Norton has been charged with contempt for failing to produce required documents, and some members of Congress and the public are joining the plaintiffs in a call for the government to stop postponing the case with reorganization attempts, seen merely as stalling tactics costing the government even more time and money. The plaintiffs would like to see the government stick to the case and correct problems with the current system, rather than further muddling the process by reorganization.⁶

One of the recent problems found with the current system and the subject of particular concern to government documents librarians, is the major security gaps found in the security of the Departments of the Interior and Treasury's computer system, which did not adequately protect the accounts of 500,000 beneficiaries. The discovery of the problem led to immediate shutdown of the entire computer network of the Department of the Interior, which affected much more than the Indian Trust accounts. While many sites were allowed to come back online when they demonstrated that their sites were either unrelated to the trust data or sufficiently secure, several sites were down for weeks or months. Citizens logging on to check information on National Parks, or archaeologists and scholars studying the Kennewick Man or other archeological sites within the National Park System were denied access. Other affected sites included the Fish and Wildlife Service, the Minerals Management Service, which came back online only to be shut down again in May, the Office of Surface Mining, and the Bureau of Indian Affairs.⁷ The B.I.A. remains offline at the time of this writing.

Not only were scholars and members of the public concerned about the lack of access, government documents librarians raised concerns among themselves of the implications of this restricted access. As John Koch, librarian at the University of Wisconsin-Madison, stated in a posting to the GOVDOC-L listserv,

"This is another issue of concern for the future. If a court order can shut down a federal web [sic] site for long periods of time, accessibility is in real danger."⁸ Public access to government information is an essential aspect of a successful democracy, and limiting or restricting access to this information is something that occurs more often than many in the general public may realize. Government documents librarians and others interested in keeping pathways to this information open and easily accessible do a great service by staying alert when restrictions of this sort occur. However, the larger injustice of over a hundred years of mismanagement of thousands of American Indians' trust funds outweighs this temporary shutdown. Further, the seriousness of this situation, the adverse reactions to the loss of information, and the overall inconvenience of the loss of Internet access could be seen as a blessing for the future security of access to government information.

The lessons learned from the loss of historical data are timely as well. Perhaps now governmental agencies will realize both the penetrability of and the need for information on their computer systems. Additionally, they must realize the importance of maintaining accurate and complete records of government information. With this realization we can hope that the government will be dedicated to ensuring secure systems that thoroughly archive documents for future historical research. The lessons to be learned from this case on social, political, and technological levels are great. Let us work to ensure that the government learns from these lessons for the future of our democracy.

WORKS CITED

- Cobell v. Babbitt. November 27, 1996. "First Order for the Production of Information," Civil Action no. 1:96CV01285, United States District Court for the District of Columbia, Judge Lamberth. Retrieved July 23, 2002, from http://www.indiantrust.com/rulings/First_Order_FP.PDF
- Friel, B. (2002, March 18). Many interior employees still stuck offline. *Government Executive Magazine (online)*. Retrieved July 7, 2002, from <http://www.govexec.com/news/index.cfm?mode=report&article=2253.htm>
- Kennedy, M.J. (2002, July 16). Truth and consequences on the reservation. *Los Angeles Times (online)*, retrieved July 22, 2002, from http://www.indiantrust.com/print/clips.cfm?news_id=233
- Koch, J. (2001, December 12). Message posted to GOVDOC-L listserv. Retrieved June 30, 2002, from GOVDOC-L archives, <http://www.lib.duke.edu/cgi-bin/tehis/searchdb/govdoc-l/search>

Lamberth, R.C. (Dec. 5, 2001) Temporary Restraining Order. Cobell v. Norton, Civil No. 96-1285. United States District Court for the District of Columbia. Retrieved July 16, 2002, from http://www.indiantrust.com/rulings/2001.12.05_TRO.pdf

Native American Trust Fund. *Historical Timeline: Indian Trust Funds Management*. From the Native American Trust Fund Home Page, retrieved July 7, 2002, from <http://www.narf.org/cases/iimtimeline.html>

Office of the Secretary. Department of the Interior. (2002, November 20). Secretarial Order no. 3235, "Establishment of the Office of Indian Trust Transition." Retrieved June 30, 2002, from http://elips.doi.gov/elips/sec_orders/html_orders/3235.htm

U.S. Representatives Dale E. Kildee and J.D. Hayworth, Co-Chairs of the Congressional Native American Caucus. (2002, July 18). Press Release. Retrieved July 23, 2002 from http://www.indiantrust.com/releases.cfm?press_id=73

BIBLIOGRAPHY

Blackfeet Reservation Development Fund. Indian Trust web site. Retrieved July 22, 2002 at <http://www.indiantrust.com/>

Cobell v. Babbitt. 96 CV 1285, United States District Court for the District of Columbia, 1999. Decided June 7, 1999. Retrieved July 21, 2002, from Lexis-Nexis Academic Universe.

Cobell v. Norton. 96 CV 1285. United States District Court for the District of Columbia, 2001. Decided December 6, 2001. Retrieved July 21, 2002, from Lexis-Nexis Academic Universe.

Federal Computer Week. Retrieved July 7, 2002, from <http://www.fcw.com/fcw/articles>

GODORT website, information on the Department of the interior website, Retrieved July 22, 2002 at <http://sunsite.berkeley.edu/GODORT/legislation/>

GOVDOC-L Listserv archives, Retrieved July 22, 2002 at <http://docs.lib.duke.edu/federal/govdoc-l/search.html>

Government Computer News. Retrieved July 22, 2002, from <http://www.gcn.com>

Government Executive Magazine (online). Retrieved July 22, 2002 from <http://govexec.com>

Native American Rights Fund Home Page. Retrieved July 7, 2002, from <http://www.narf.org>

Office of Historical Trust Accounting. (2002, July 2). *Report to Congress on Historical Accounting of Individual Indian Money Accounts*. United States Department of the Interior. Retrieved July 22, 2002, from <http://www.doi.gov/phta/revreport.pdf>

People, Land and Water. Magazine of the Department of the Interior. SuDocs No I 1.116

—. (May/June 2002). Review of the National Park Service web site. *Archaeology*, 55(3), 60.

United States. Department of the Interior. (2002, February 27). *Fiscal Year 2001 Annual Departmental Report on Accountability*. Retrieved July 20, 2002 from <http://www.doi.gov/pfm/acctrpt2001/>

United States Department of the Interior web page, retrieved July 8, 2002, from <http://www.doi.gov>

ENDNOTES

1 Lamberth, R.C. (Dec. 5, 2001) Temporary Restraining Order. Cobell v. Norton, Civil No. 96-1285. United States District Court for the District of Columbia. Retrieved July 16, 2002, from http://www.indiantrust.com/rulings/2001.12.05_TRO.pdf

2 Native American Trust Fund. *Historical Timeline: Indian Trust Funds Management*. From the Native American Trust Fund Home Page, retrieved July 7, 2002, from <http://www.narf.org/cases/iimtimeline.html>

3 Kennedy, M.J. (2002, July 16). Truth and consequences on the reservation. *Los Angeles Times (online)*, retrieved July 22, 2002, from http://www.indiantrust.com/print/clips.cfm?news_id=233

4 Cobell v. Babbitt. November 27, 1996. "First Order for the Production of Information," Civil Action no. 1:96CV01285, United States District Court for the District of Columbia, Judge Lamberth. Retrieved July 23, 2002, from http://www.indiantrust.com/rulings/First_Order_FP.PDF

5 Office of the Secretary. Department of the Interior. (2002, November 20). Secretarial Order no. 3235, "Establishment of the Office of Indian Trust Transition." Retrieved June 30, 2002, from http://elips.doi.gov/elips/sec_orders/html_orders/3235.htm

6 U.S. Representatives Dale E. Kildee and J.D. Hayworth, Co-Chairs of the Congressional Native American Caucus. (2002, July 18). Press Release. Retrieved July 23, 2002 from http://www.indiantrust.com/releases.cfm?press_id=73

7 Friel, B. (2002, March 18). Many interior employees still stuck offline. *Government Executive Magazine (online)*. Retrieved July 7, 2002, from <http://www.govexec.com/news/index.cfm?mode=report&article=2253.htm>

8 Koch, J. (2001, December 12). Message posted to GOVDOC-L listserv. Retrieved June 30, 2002, from GOVDOC-L archives, <http://www.lib.duke.edu/cgi-bin/taxis/searchdb/govdoc-l/search>